

## Important judgements and Updates

---

---

**Vishal Plastomers (P) Ltd** R/Tax Appeal No. 242 of 2019 Honourable Gujarat High Court

### Issues discussed and addressed:

Issue No 1 Unabsorbed Depreciation

Issue No 2 Addition u/s 68

Issue No 3 Bad Debts

Issue No 4 Cash Deposits

### Facts of the Case with respect to issue No 1:

The assessee claimed set off of unabsorbed depreciation against the Short Term Capital Gains.

### Held by the Authorities with respect to issue No 1:

Unabsorbed depreciation can be carried forward for unlimited years in accordance with section 32(2) of the Act. Such unabsorbed depreciation becomes part of the allowance of depreciation for the subsequent assessment year irrespective of the fact whether there is business or not i.e. such unabsorbed depreciation in the subsequent year takes the shape of the current year depreciation and in case there is no sufficient income from business and profession or no such income, the same would be adjusted against such income or if not given set off would become negative income under the head "Profit and Gains from the business and profession" of current year eligible to be set off against any other head in accordance with the provisions of section 71 of the Act.

### Judgments Relied upon by the Authorities with respect to Issue No 1:

CIT v. Mahalakshmi Sugar Mills Co. Ltd. (1986) 160 ITR 920 (SC)

### Facts of the Case with respect to issue No 2:

During the year under consideration, the assessee received unsecured loan from various parties including the Directors of the company. The assessee was asked to furnish the confirmation of the loan upon which the same was filed but not signed by the respective person but by the authorized person of the Director. The Ld. Assessing Officer came to a finding that the assessee thus not been able to prove the creditworthiness of the parties and has not discharged the onus cast upon it u/s.68 of the Act and the entire amount of Rs.20,95,000/- was added to the income of the assessee u/s.68 of the Act.

### Held by the Authorities with respect to issue No 2:

Since the PAN, address, details of ledger accounts showing such transaction through banking channel was duly filed by the authorized person before the Ld. Assessing Officer the duties of the assessee casted upon him u/s.68 of the Act has rightly been discharged in order to establish the identity, genuineness and creditworthiness.

## Important judgements and Updates

---

---

### Judgments Relied upon by the Authorities with respect to Issue No 2:

Ranchood Jivabha Nakhava 21 taxmann.com 159 (Guj.),

### Facts of the Case with respect to issue No 3:

The assessee has incurred an expenditure of Rs.5,49,74,891/- on selling and other expenses which in fact was bad debt written off. In reply to the show-cause, the assessee submitted that the bad debts details written off during the year are genuine bad debts. He further added that amount has become irrecoverable by passage of time and in spite of legal and other recovery action taken by the company against all the parties the amount has become irrecoverable. The matter was duly discussed in the Board meetings before written off. However, such explanation was not accepted by the Ld. Assessing Officer and he thus added the entire amount to the income of the assessee on the premise that written off of debt as irrecoverable has to be based upon a bona fide belief of the assessee and not merely a convenient belief.

### Held by the Authorities with respect to issue No 3:

It is not mandatory on the part of appellant to establish that debt has become bad or appellant's bonafide about the irrecoverability of debt. The only conditions required for claim of bad debt are;

- a. The debt must be trade debt and the same should have been taken in computing income of appellant of any year i.e. current year and earlier years.
- b. The debt should be written off from the books of accounts of appellant.

### Judgments Relied upon by the Authorities with respect to Issue No 3:

TRF Ltd. 323 ITR 397 (SC)

### Facts of the Case with respect to issue No 4:

In terms of Annual Information Return/ITS, the assessee has deposited cash aggregating to Rs.47,60,000/- in the Kalupur Commercial Co.op.Bank Ltd. The entire amount was added by the Ld. Assessing Officer.

### Held by the Authorities with respect to issue No 4:

The books of accounts are duly audited under the Companies Act and Income Tax Act u/s.44AB of the Act as well and such audited books and tax audit report does not reflect any adverse remarks in this regard. The contention of the assessee that the cash so deposited in the bank account is out of cash available in the hand or out of withdrawals from bank in normal business activity. This particular fact is supported by the cash book being a good evidence for source of such cash deposits. The addition is based on surmises & conjectures.

## Important judgements and Updates

---

**Jagjit Singh** ITA Nos. 1095, 1096, 1097, 1098/Del./2015

### Issues Addressed and Discussed:

Assessment u/s 153C r.w.s 153A in absence of incriminating material and computation of 6 years

### Facts of the case:

Assessee is into the business of builders and developers. On the basis of search operation carried out at the business premises of M/s. ABW Group of cases as well as residential premises of their Directors, certain documents/ books of account were seized. Assessing officer (AO) of the searched person recorded satisfaction note dated 23-1-2014 on the basis of documents seized stating therein that certain documents belonging to assessee company were seized and provisions contained under section 153C of the Income Tax Act, 1961 (for short 'the Act') are attracted. Thereafter, assessing officer of the person other than searched person examined the documents seized and recorded a fresh satisfaction note dated 23-1-2014 by recording satisfaction that said documents belonged to assessee company and thereby issued notice dated 23-1-2014 under section 153C read with section 153A of the Act for assessment years 2006-07 to 2011-12 and notice under section 143 (3) for assessment year 2012-13 on the basis of satisfaction note dated 20-1-2014 prepared by assessing officer of M/s. ABW Infrastructure (P) Ltd. i.e. searched person

From the bank statement, assessing officer noticed that there has been heavy cash deposit in the account of the assessee. Declining the contentions raised by the assessee, assessing officer made addition of Rs. 73,45,000 , Rs. 51,50,000 , Rs. 84,70,000 & Rs. 70,10,000 for assessment years 2009-10, 2010-11, 2011-12 & 2012-13 respectively on account of unexplained cash credit under section 68 of the Act.

### Held by the Authorities:

When we examine aforesaid two satisfaction notes, one recorded in the case of searched person and another in the case of such other person, assessee in this case, referred in provisions contained under section 153C(1), it is undisputed fact on record that the satisfaction note of the searched person is dated 20-1-2014 and in such circumstances, the date of handing over the seized material to the assessing officer of the present assessee is to be treated the date of search. And thus , assessing officer was empowered to issue the notices under section 153C for assessment years 2008-09 to 2013-14 only that too subject to the unearthing of incriminating material having reflection on the income of the assessee..

Bare perusal of the satisfaction note does not indicate as to how and under what circumstances assessing officer of the assessee made himself satisfied that the aforesaid alleged documents belong to assessee and how they are incriminating in nature. Furthermore, assessing officer has nowhere recorded the fact that as

## Important judgements and Updates

---

to how the aforesaid documents do not belong to M/s. ABW Infrastructure (P) Ltd. and how and under what circumstances, the same do not belong to searched person rather mechanically recorded in the satisfaction note that these aforesaid documents belong to assessee.

Firstly, assessing officer of the searched person, namely, M/s. ABW Infrastructure (P) Ltd. must arrive at a categorical satisfaction that a document seized from him does not belong to him (searched person) but to some other person and second requirement is after such satisfaction is arrived at that the document is handed over to the person to whom the said document belongs. In the instant case, both the aforesaid conditions have not been satisfied by the assessing officer of the searched person and then assessing officer of the other person, the assessee in this case, has mechanically proceeded to initiate the proceedings under section 153C and 153A by merely recording the word satisfaction that the seized documents belong to assessee. Furthermore, the assessing officer has also failed to conclude as to how the alleged documents were incriminating in nature in order to assess the income of the assessee under section 153C of the Act. So, in the absence of existence of any incriminating material, power under section 153C cannot be invoked.

In view of above assessment framed by the assessee under section 153A read with section 153C for assessment years 2009-10, 2010-11 and 2011-12 is bad in law for want of jurisdictional error with the assessing officer. At the same time, assessment framed under section 143 (3) for assessment year 2012-13 is also bad in law because date of handing over the seized document is 20-1-2014 and the assessment in this case was required to be framed under section 153C.

### Judgments Relied upon by the Authorities:

- 1) RRJ Securities Ltd. (2015) 380 ITR 612 (Del)
- 2) ARN Infrastructure India Ltd. 394 ITR 569 (Del)
- 3) Sarwar Agency (P) Ltd. (2017) 397 ITR 400 (Del)
- 4) Sinhgad Technical Education Society (2017) 397 ITR 344 (SC)

### Kind Attention:

By virtue of the amendment made by Finance Act, 2017, now the six / ten years for both Searched Person and Other Person will be same in cases where searches have been commenced on or after 01-04-2017.

## Important judgements and Updates

---

**Lalji Khimjibhai Patel ITA Nos.712 to 715/Rjt/2010 & 388 to 391/Rjt/2013**

### Issues discussed and addressed:

Search Cases – Completed Assessments can not be disturbed in absence of incriminating material.

Validity of Addition made in case of Amount Admitted during the search

### Facts of the case with respect to Issue No 1:

According to the assessing officer, during the course of search certain incriminating material were found and seized. Notice under section 153A of the Act was issued on 1-10-2007 which was duly served upon the assessee. AO determined taxable income of the assessee in the assessment year 2001-02 at Rs. 81,85,796 as against Rs. 1,16,610 returned by the assessee. There is no dispute that the assessments in all these four years have been made under section 143(3) read with section 153A.

### Held by the Authorities with respect to Issue No 1:

No material was found during the course of search relating to this assessment year exhibiting escapement of taxable income or availability of undisclosed income for the purpose of assessment under section 153A of the Income Tax Act. If there is no material available, and on re-appraisal of that very material addition has been made by the assessing officer, then such assessment order is not sustainable in the eyes of law,

### Judgments Relied upon by the Authorities:

- 1) Saumya Construction Ltd. (2016) 387 ITR 529 (Guj),
- 2) Kurele Papers (2016) 380 ITR 571 (Del)
- 3) Desai Construction (P) Ltd.(2016)387ITR552 (Guj)
- 4) Kabul Chawla, (2015) 380 ITR 573 (Del)
- 5) CIT v. Lata Jain 384 ITR 543 (Del).

### Facts of the case with respect to Issue No 2:

During the course of search, statement of the assessee was recorded under section 132(4) of the Act. In reply to question no.30, the assessee himself categorically admitted that an amount of Rs. 80,69,186 for construction of Somnath building was incurred out of books. Therefore, the assessee was required to include this admitted income in his return of income, but it was not included. The assessing officer has confronted the assessee as to why he has not disclosed the undisclosed income admitted during the course of search. In response to the query of the assessing officer, it was submitted by the assessee that during the course of search, his accountant was made to write on a piece of paper various expenditure relating to construction activities of Somnath building whose total worked out at Rs. 80,69,186. He alleged that nothing was found during the course of search and an affidavit to this effect was filed.

## Important judgements and Updates

---

### Held by the Authorities with respect to Issue No 2:

No doubt, the disclosure or admission made under section 132(4) of the Act during the course of search proceedings is an admissible evidence but not conclusive one. This presumption of admissibility of evidence is a rebuttable one, and if an assessee is able to demonstrate with the help of some material that such admission was either mistaken, untrue or based on misconception of facts, then solely on the basis of such admission no addition is required to be made. It is true that admission being declaration against an interest are good evidence, but they are not conclusive, and a party is always at liberty to withdraw the admission by demonstrating that they are either mistaken or untrue.

Due to this grey situation, CBDT has issued Circular No. 286/2/2003 prohibiting the departmental officials from taking confession in the search. The CBDT is of the view that often the officials used to obtain confessions from the assessee and stop further recovery of the material. Such confessions have been retracted and then the addition could not withstand the scrutiny of the higher appellate authority, because no material was found supporting such addition.

Passage of time before passing of the assessment order would not legalise any illegality. If something has been inherently gone wrong, at the time of search, then during the assessment proceedings, that facts should have been ascertained by the assessing officer. It was for the assessing officer to call for independent witness as well as accountant of the assessee in support of the report of the investigation wing. Onus is not upon the assessee. It is the assessing officer who has to first establish that some undisclosed expenditure was incurred by the assessee and details recorded to that were found. On the basis of simple declaration even under section 132(4) addition cannot be made.

### Judgments Relied upon by the Authorities:

- 1) CIT v. Maulikkumar K. Shah Gujarat high Court ,
- 2) K.P.M. Nair v. ACIT Gujarat high Court

**Lotus Education Society** ITA No. 360/JP/2019

### Issues discussed and addressed:

Exemption u/s 11 and 12

### Facts of the case:

The assessee society is engaged in imparting education and is running an engineering college in the name of Jaipur Institute of Technology, Jaipur. It is registered under the Registration Society Regulation Act, 1958 and is also registered under section 12AA of Income Tax Act, 1961 In course of assessment proceedings, the

## Important judgements and Updates

---

assessing officer observed that assessee has shown unsecured loans of Rs. 8,85,32,180. To verify the genuineness of these unsecured loans, information was called for under section 133(6) in the Income Tax Act. In nine cases, reply was not received, in case of Ramesh Kumar Sarogi, letter was returned back by the postal authorities with the remark incomplete address and in case of Anil Kumar Nuhal, there was difference in the amount of loan to the extent of Rs. 5,00,000. In view of these discrepancies, assessing officer denied the exemption under section 11 & 12 of Income Tax Act, 1961 and completed the assessment by treating the assessee as an Association of Persons and taxed the surplus amount of Rs. 1,32,02,345 in its hands at the maximum marginal rate.

### Held by the Authorities:

There is no finding recorded by the assessing officer in terms of non-fulfilment of conditions specified in section 11, 12, 12A and 13 of the Act by the assessee society. Regarding non-verification of certain unsecured loan accounts and discrepancy in loan amount of Rs. 5 lacs, the same cannot be a basis for denial of exemption under section 11 and 12.

### Pushendra Singh I.T.A. Nos. 332, 333/Agra/2018

### Issues discussed and addressed:

Validity of Reopening in case of Cash Deposit

### Facts of the case:

An information was received that assessee had deposited cash amounting to Rs. 12,50,000 in his bank account bearing number 09490110001288 and remained unexplained to prove the source thereof in enquiry proceedings initiated vide Letters, dated 26-4-2011 and 3-9-2015 which led to notice under section 148 of the Act, issued on 31-3-2016 after recording reasons. In response to the notice return of income was filed showing only interest income of Rs. 6,170, and during the course of assessment proceedings evidences filed to explain the sources of cash deposits stating to be from sale of agriculture produce grown on agriculture land held in the name of Father, did not favour with the view held by the learned assessing officer who framed assessment under section 147/143(3) of the Act determining total income at Rs. 12,56,170.

### Held by the Authorities:

As per section 133(6), the concerned income tax authority may require any person, inter alia, to furnish information in relation to such points or matters, as in their opinion would be useful for, or relevant to, any enquiry or proceeding under the Act. Pre-1995 amendment, section 133(6) could be invoked only in cases

## Important judgements and Updates

---

where some proceedings were pending, and not otherwise; The 1995 amendment brought in power to the revenue to gather information which, after proper inquiry, would result in initiation of proceedings under the Act. However, by virtue of the second proviso to the section, an income-tax authority below the rank of Commissioner can exercise this power in respect of an enquiry, in a case where no proceeding is pending, only with the prior approval of the Director or Commissioner.

In the present case, the enquiry letter was issued by the Income Tax Officer, i.e., an officer below the rank of the income-tax authorities referred to in the second proviso to section 133(6). Thus, prior approval was required to be obtained from the competent authority before exercising power under section 133(6). There is nothing on record to suggest that any such prior approval was obtained herein. The letter, per se, also does not make mention of any such approval. Hence, the power exercised by the Income Tax Officer, without compliance with the second proviso to section 133(6), would tantamount to an illegal exercise of power.

The letter of enquiry being illegal, it was not obligatory on the assessee to respond to the same. Hence, non-response by the assessee to the enquiry letter cannot be said to constitute material before the assessing officer which could lead him to form any belief of escapement of income. Thus, the only material left with the assessing officer to enable him to form a belief that income had escaped assessment was the information regarding the cash deposits.

Where the assessing officer issued a notice under section 148 on the ground that there was an escapement of income and the belief regarding such escapement of income was formed on the fallacious assumption of the assessing officer that bank deposits constituted undisclosed income, overlooking the fact that the source of the deposits need not necessarily be the income of the assessee, the reassessment proceedings cannot be sustained.

### Judgments Relied upon by the Authorities:

1. Amrik Singh v. ITO", (2016) 70 taxmann.com 26 (Asr)
2. Bir Bahadur Singh Sijwali v. ITO (2015) 53 taxmann.com 366 : 68 SOT 197 (URO) (Delhi-Trib.)
3. Ingram Micro (India) Exports (P) Limited v. DCIT (2017) 78 taxman.com 140 (Bom.)